

## CONFERENCE COMMITTEE REPORT DIGEST FOR ESB 209

**Citations Affected:** IC 24-5-12.5; noncode.

**Synopsis:** No sales solicitation list. Requires the consumer protection division of the office of the attorney general to publish a listing of telephone numbers of persons who do not wish to be solicited by telephone. Establishes a \$2 initial listing charge for a person who wishes to be included in the listing and a \$2 annual renewal fee. (Provides that individuals who request to be on the listing before July 1, 2000, are not required to pay the initial listing charge.) Prohibits a telephone solicitor from calling a number that appears in the quarterly listing published by the consumer protection division. Requires a telephone solicitor who makes an unsolicited telephone call to state the solicitor's name and the name of the business on whose behalf the solicitor is calling. Establishes criminal penalties and civil remedies for violations of the statute. Requires the consumer protection division to make an annual report to the regulatory flexibility committee regarding operation of the no call list program. (This conference committee report removes provisions relating to registration of telephone solicitors with the consumer protection division and provisions relating to the validity of contracts made through telephone solicitations. The conference committee report reduces the initial listing fee from \$5 to \$2 and the annual renewal fee from \$10 to \$2. The conference committee report restores and modifies an exemption relating to calls made by certain small businesses. The conference committee report adds an exemption for calls made by licensed insurance agents selling insurance products regulated under Indiana law. The conference committee report also restores the provision requiring the consumer protection division to provide a free copy of a listing upon request to an organization that creates its own no call list for its members.)

**Effective:** Upon passage; July 1, 2000.

# CONFERENCE COMMITTEE REPORT

**MR. PRESIDENT:**

*Your Conference Committee appointed to confer with a like committee from the House upon Engrossed House Amendments to Engrossed Senate Bill No. 209 respectfully reports that said two committees have conferred and agreed as follows to wit:*

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

- 1           Page 1, delete lines 1 through 17.
- 2           Delete page 2.
- 3           Page 3, delete lines 1 through 6.
- 4           Page 3, delete lines 11 through 42, begin a new paragraph and
- 5       insert:
- 6           **"Sec. 1. As used in this chapter, "consumer" means an actual**
- 7           **or a prospective purchaser, lessee, or recipient of consumer goods**
- 8           **or services.**
- 9           **Sec. 2. As used in this chapter, "consumer goods or services"**
- 10          **means real property or tangible or intangible personal property**
- 11          **that is normally used for personal, family, or household purposes,**
- 12          **including the following:**
- 13               (1) **Property intended to be attached to or installed in real**
- 14               **property without regard to whether it is attached or**
- 15               **installed.**
- 16               (2) **Cemetery lots.**
- 17               (3) **Timeshare estates.**
- 18               (4) **Services related to the property.**
- 19               (5) **Credit cards.**
- 20          **Sec. 3. As used in this chapter, "division" refers to the**
- 21          **consumer protection division of the office of the attorney general.**
- 22          **Sec. 4. As used in this chapter, "doing business in Indiana"**
- 23          **refers to a business that conducts telephone sales calls from a**
- 24          **location in Indiana or from other states or nations to consumers**
- 25          **located in Indiana.**

1       **Sec. 5.** As used in this chapter, "listing" refers to the no sales  
 2       solicitation listing published by the division that lists the names of  
 3       persons who do not wish to receive telephone sales calls.

4       **Sec. 6.** As used in this chapter, "telephone solicitor" means an  
 5       individual, a firm, an organization, a partnership, an association,  
 6       or a corporation, including affiliates and subsidiaries, doing  
 7       business in Indiana, except those subject to 47 CFR parts 64 and  
 8       68, that makes or causes to be made a telephone sales call.

9       **Sec. 7. (a)** As used in this chapter, "telephone sales call" means  
 10      a call made by a telephone solicitor to a consumer for the purpose  
 11      of:

- 12       (1) soliciting a sale of consumer goods or services;
- 13       (2) soliciting an extension of credit for consumer goods or
- 14       services; or
- 15       (3) obtaining information that will or may be used for the
- 16       direct solicitation of a sale of consumer goods or services or
- 17       an extension of credit for such purposes.

18      **(b)** The term does not include any of the following:

- 19       (1) A telephone call made in response to an express request
- 20       of the person called.
- 21       (2) A telephone call made primarily in connection with an
- 22       existing debt or contract for which payment or performance
- 23       has not been completed at the time of the call.
- 24       (3) A telephone call made to a person with whom the
- 25       telephone solicitor has had a business relationship within the
- 26       past eighteen (18) months.
- 27       (4) A telephone call made on behalf of a business that makes
- 28       calls:

29           (A) not otherwise described in this subsection; and

30           (B) to persons located not more than ten (10) miles from  
 31       the primary business location of the business.

32      The telephone solicitor must provide the address of the  
 33      primary business location of the business at the time the call  
 34      is made.

35       (5) A telephone call by a newspaper publisher or the  
 36       publisher's agent or employee in connection with that  
 37       business.

38       (6) A telephone call made on behalf of a charitable  
 39       organization (as defined in Section 501 of the Internal  
 40       Revenue Code).

41       (7) A telephone call made on behalf of a political candidate  
 42       or political party.

43       (8) A telephone call made by a person licensed under  
 44       IC 25-34.1 who calls an actual or prospective seller, lessor, or  
 45       purchaser of real property.

46       (9) A telephone call made by a person licensed under  
 47       IC 27-1-15.5 who offers to sell insurance products regulated  
 48       under IC 27.

49      **Sec. 8. (a)** The division shall publish a quarterly listing of  
 50      telephone numbers of persons who request not to be solicited by  
 51      telephone.

(b) The division shall place the telephone number of a residential, mobile, or telephonic paging device telephone subscriber on the listing if:

- (1) the subscriber notifies the division according to a procedure established by the division; and
- (2) the division receives a two dollar (\$2) initial listing charge for each telephone number listed.

The listing for each telephone number must be renewed annually by the division upon receipt of a renewal notice and payment of a two dollar (\$2) renewal fee for each telephone number.

(c) The division shall update the listing upon receipt of initial consumer subscriptions or renewals.

(d) The division shall adopt rules under IC 4-22-2 to establish a fee for providing the listing to telephone solicitors upon the telephone solicitor's request. The fee established under this subsection may not exceed the amount necessary to reimburse the division for the costs of providing the listing to telephone solicitors.

(e) The division shall furnish the listing free of charge to an organization whose purpose is to create a list of names of people who do not want calls from telephone solicitors. The organization may disseminate the listing to its members instead of a member purchasing the listing from the division. However, before receiving the list, the organization must provide notice to the division of the name, address, and phone number of the organization's members to whom the list will be disseminated.

Sec. 9. (a) The consumer protection division solicitation fund is established for the purpose of the administration of this chapter and shall be used exclusively for this purpose.

(b) The fund shall be administered by the office.

(c) The division shall deposit all fees received under this chapter in the fund.

(d) Money in the fund at the end of a state fiscal year does not revert to the state general fund.

Sec. 10. (a) A telephone solicitor may not make or cause to be made a telephone sales call to a:

- (1) residential;
- (2) mobile; or
- (3) telephonic paging device;

telephone number, if that telephone number appears in the most current quarterly listing published by the division.

(b) A telephone solicitor who makes a telephone sales call to a residential, mobile, or telephonic paging device telephone number shall immediately disclose the following information upon making contact with the person who is the subject of the telephone solicitation:

- (1) The solicitor's true first and last name.
- (2) The name of the business on whose behalf the telephone solicitor is soliciting.

(c) This subsection does not apply to a person obtaining consumer information for inclusion in directory assistance and telephone directories sold by telephone companies and

1 organizations exempt under section 501(c)(3) or section 501(c)(6)  
 2 of the Internal Revenue Code. A telephone solicitor or person who  
 3 obtains consumer information that includes:

- 4 (1) residential;
- 5 (2) mobile; or
- 6 (3) telephonic paging device;

7 telephone numbers shall exclude the telephone numbers that  
 8 appear on the division's most current listing.

9 Sec. 11. The division shall investigate complaints received  
 10 concerning violations of this chapter.

11 Sec. 12. The division shall notify Indiana residents of the rights  
 12 and duties created by this chapter.

13 Sec. 13. A telephone solicitor who fails to comply with any  
 14 provision of this chapter commits a deceptive act that is actionable  
 15 by the attorney general under IC 24-5-0.5-4(c) and is subject to the  
 16 penalties set forth in IC 24-5-0.5. An action by the attorney general  
 17 for a violation of this chapter may be brought in the circuit or  
 18 superior court of Marion County.

19 Sec. 14. A telephone solicitor who knowingly or intentionally  
 20 fails to comply with section 10 of this chapter commits a Class A  
 21 misdemeanor. However, the offense is a Class D felony if the  
 22 telephone solicitor has a prior unrelated conviction under this  
 23 section.

24 Sec. 15. This chapter does not relieve a person from complying  
 25 with any other statute or ordinance.

26 Sec. 16. (a) The division shall, after June 30 and before  
 27 October 1 of each year, report to the regulatory flexibility  
 28 committee established under IC 8-1-2.6-4 on the following:

- 29 (1) For the state fiscal year ending June 30, 2000, the
- 30 expenses incurred by the division in establishing the listing.
- 31 (2) The total amount of fees deposited in the fund during the
- 32 most recent state fiscal year.
- 33 (3) The expenses incurred by the division in maintaining and
- 34 promoting the listing during the most recent state fiscal year.
- 35 (4) The projected budget required by the division to comply
- 36 with this chapter during the current fiscal year.
- 37 (5) Any other expenses incurred by the division in complying
- 38 with this chapter during the most recent state fiscal year.
- 39 (6) The total number of subscribers to the listing at the end
- 40 of the most recent state fiscal year.
- 41 (7) The number of new subscribers added to the listing
- 42 during the most recent state fiscal year.
- 43 (8) The number of subscribers removed from the listing for
- 44 any reason during the most recent state fiscal year.

45 (b) The regulatory flexibility committee shall, before  
 46 November 1 of each year, issue a report and recommendations to  
 47 the legislative council concerning the information received under  
 48 subsection (a).

49 Sec. 17. The division may adopt rules under IC 4-22-2 to  
 50 implement this chapter."

51 Delete pages 4 through 8.

Page 9, delete lines 1 through 26.

Page 9, after line 32, begin a new paragraph and insert:

"SECTION 3. [EFFECTIVE UPON PASSAGE] (a) **The definitions in IC 24-5-12.5, as added by this act, apply throughout this SECTION.**

(b) **The division shall place a subscriber's telephone number on the listing as provided in IC 24-5-12.5-8, as added by this act, if the subscriber has requested to be placed on the listing before July 1, 2000.**

(c) **Notwithstanding IC 24-5-12.5-8, as added by this act, a subscriber who has requested the subscriber's telephone number to be placed on the listing before July 1, 2000, is not required to pay the initial listing charge described in IC 24-5-12.5-8.**

(d) **This SECTION expires January 1, 2001.**

SECTION 4. [EFFECTIVE JULY 1, 2000] (a) **The definitions in IC 24-5-12.5, as added by this act, apply throughout this SECTION.**

(b) **Not later than January 15, 2001, the division shall update the report required by IC 24-5-12.5-16, as added by this act, to cover the period from July 1, 2000, through December 31, 2000.**

(c) **The division shall provide not less than twenty-five (25) copies of the updated report to the legislative services agency. The legislative services agency shall distribute a copy of the updated report to each member of the regulatory flexibility committee not later than February 1, 2001.**

(d) **This SECTION expires July 1, 2001.**

SECTION 5. **An emergency is declared for this act."**

Renumber all SECTIONS consecutively.

(Reference is to ESB 209 as reprinted February 22, 2000.)

**Conference Committee Report**  
**on**  
**Engrossed Senate Bill 209**

**S**igned by:

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Senator Long  
Chairperson

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Representative Sturtz

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Senator Lanane

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Representative Becker

**Senate Conferees**

**House Conferees**